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BEFORE THE  
**Federal Communications Commission**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

REVISION OF PART 22 OF THE  
COMMISSION'S RULES GOVERNING THE  
PUBLIC MOBILE SERVICES

CC Docket No. 92-115

To: The Commission

**REPLY COMMENTS OF AIRTOUCH PAGING**

AirTouch Paging, by its attorneys, hereby respectfully submits its reply to comments filed in reference to the Commission's Further Notice of Proposed Rulemaking, released May 20, 1994 ("NPRM"),<sup>1/</sup> which proposes, *inter alia*, to alter the processing rules for 931-932 MHz common carrier paging licenses. The following is respectfully shown:

**I. Introduction**

1. The Commission received 15 comments (collectively, the "Comments") specifically directed to the rule changes

<sup>1/</sup> FCC 94-102.

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proposed in the NPRM for 931 MHz paging.<sup>2/</sup> The Commen, while coming from a variety of companies, both large and small,<sup>3/</sup> sound several recurring themes. First, the Commenters generally agree that only minimal rule changes should be applied retroactively in today's frequency-congested markets, such as the Northeastern United States and Chicago, in which the filing windows have closed. Second, only a few Commenters agreed with the Commission proposal to abandon block allocation processing rules. As an alternative, some of the Commenters -- including AirTouch Paging -- suggested the Commission adopt market area licensing to achieve the goals outlined by the Commission in the NPRM. Third, many of the Commenters recommend relaxing -- from two kilometers to a fifty percent overlap area -- the definition of a permissible site relocation which could be made without subjecting the applicant to mutually exclusive applications. AirTouch Paging discusses these topics in separate sections below.

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<sup>2/</sup> Comments on the 931 MHz paging rules changes were filed by AirTouch Paging, Alpha Express, Inc. ("Alpha"), Ameritech Mobile Services, Inc. ("Ameritech"), Comp Comm, Inc., Metrocall, Inc., Paging Partners Corporation ("Paging Partners"), Paging Network, Inc. ("PageNet"), Personal Communications Industry Association ("PCIA"), Premiere Page, Inc. ("Premiere"), Priority Communications, Inc. ("Priority"), Pronet, Inc., SkyTel Corporation ("SkyTel"), SMR Systems, Inc. ("SSI"), Source One Wireless, Inc. ("Source One"), and Tri-State Radio Co. ("Tri-State") (collectively, the "Commenters").

<sup>3/</sup> Small companies included such companies as SSI, and alpha. Large paging operators included AirTouch and PageNet.

## **II. The Commission Must Eliminate The Log Jam In Frequency-Congested Markets**

2. Not surprisingly, many Commenters are parties to long-pending 931 MHz applications that have gone unprocessed largely because of frequency shortages and uncertainties in the 931 MHz mutually exclusive application procedures. Virtually all these Commenters contend that the Commission should minimize the impact of any rule changes on currently pending applications, or applications which are contested or not final.<sup>4/</sup> They support this position on several grounds. First, these Commenters believe that adopting new rules in midstream would create legal problems, such as a denial of due process and a bill of attainder.<sup>5/</sup> Second, these Commenters conclude that the proposed rules, when applied to previously filed applications, would not serve the public interest.<sup>6/</sup>

3. AirTouch Paging recognizes that the retroactive application of new processing rules could have an adverse impact on certain parties with applications currently pending or subject

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<sup>4/</sup> See Comments of Alpha at pp. 5-10; Metrocall at pp. 3-4; Paging Partners at pp. 2-4; Premiere at pp. 4-9; Pronet at pp. 3-5; SkyTel at pp. 15-17; Source One at pp. 2-3; Tri-State at pp. 5-23; but see contra SSI at pp. 2-3.

<sup>5/</sup> See Comments of Alpha at pp. 6-7, and 9-10; Paging Partners at pp. 2-4; Premiere at p. 6; Pronet at pp. 3-5; SkyTel at fn. 11; Tri-State at pp. 9-17.

<sup>6/</sup> See Comments of Alpha at 7-8, Paging Partners at p. 4; Premiere at pp. 5-7; Pronet at pp. 4-5; and Tri-State at pp. 22-23. Interestingly, most of these same Commenters did not address in any substantive way whether the application processing rules serve the public interest for new applications. The only comments which addressed the frequency specific processing rules were AirTouch Paging, Comp Comm, PageNet, PCIA, Premiere, SkyTel, and SSI.

to petitions for reconsideration or petitions to deny. However, AirTouch Paging also strongly believes that the current situation -- where licensing has come to a virtual standstill in congested markets -- definitely does not serve the public interest.<sup>7/</sup>

Since the Commission apparently has concluded that it is unable to break the log jam using its current rules, some modification of the rules would seem to be appropriate.<sup>8/</sup> But, in making changes, the Commission should seek to minimize the legal problems that the Commenters point out as inherent in the Commission's proposal.

4. AirTouch Paging, in its Comments, proposed an approach to 931 MHz licensing that it believes would relieve the processing backlog in markets that presently are tied up. Specifically, AirTouch Paging proposed increasing the number of channels available to resolve mutual exclusivities,<sup>9/</sup> and using auctions to select licensees in markets where mutual exclusivities remained. AirTouch believes that its proposed solution to the currently congested markets strikes an appropriate balance between the need to resolve these congested markets and the public interest. Accordingly, AirTouch Paging

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<sup>7/</sup> It is ironic that the very applicants the Commission is seeking to help by it proposing rules that would quickly dispose of the problems in the congested markets are vehemently opposed to it.

<sup>8/</sup> Of course, if the rule changes which are proposed for the congested markets do not serve the public interest for those markets, AirTouch Paging fails to see how it would serve the public interest in noncongested markets.

<sup>9/</sup> This would be done by allowing recently recaptured channels to be used to satisfy long pending frequency requests. See Comments of AirTouch, para. 10.

urges the Commission to adopt its proposed changes. If the Commission feels additional discussion may be warranted, this aspect of the proceeding may be appropriate for an open meeting of all interested parties.<sup>10/</sup>

**III. The Commission Should Adopt  
Market Area Licensing and Not Abandon  
The Block Allocations Processing Rules**

5. Seven Commenters addressed the proposed rule change that would require applicants to pick specific 931 MHz frequencies, rather than having the Commission make assignments from the block.<sup>11/</sup> Of these, three supported the Commission's proposal to abandon the block allocation processing rules and four support their continued use.<sup>12/</sup> The Commenters supporting the Commission's proposal to abandon the block allocation processing rules cite increased efficiency of licensing and reduced possibility of mutually exclusive applications.<sup>13/</sup> The Commenters opposing the Commission abandoning block allocation processing rules point out that frequency specific applications will lead to strike applications, additional mutual exclusivity,

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<sup>10/</sup> This is similar to the open hearing hosted by PCIA for the Part 22 Rewrite.

<sup>11/</sup> See Comments of AirTouch Paging, Comp Comm, PageNet, PCIA, Premiere, SkyTel, and SSI.

<sup>12/</sup> Comp Comm and SSI fully support the Commission's proposal while PageNet supports the Commission's proposed new rules requiring frequency specific applications with some modification. AirTouch Paging, PCIA, Premiere, and SkyTel all oppose abandoning block allocation rules.

<sup>13/</sup> See Comments of Comp Comm at p. 5; PageNet at pp. 8-9; and SSI at pp. 2-3.

and filing gamesmanship.<sup>14/</sup> PageNet, a supporter of the Commission's proposal, argues that frequency specific licensing will lead to additional chances for mutually exclusive applications and possibility strike applications, so it suggests adoption of first-come, first served processing rules.<sup>15/</sup>

6. The Commission should not abandon the block allocation processing rules because its proposal to do so received scant support from the Commenters. The current block allocation rules have served the Commission well and have led in most instances to timely grants of applications.<sup>16/</sup> Indeed, in AirTouch Paging's experience, the application processing times for block-processed 931 MHz applications are generally comparable to the processing times for frequency specific VHF and UHF applications.<sup>17/</sup> In addition, the Commission's experience with licensing VHF and UHF paging channels must confirm the concern that frequency specific licensing can and will lead to a substantial increase in strike applications. Consequently, AirTouch Paging reiterates its request that the block allocation plan be retained, perhaps with an increased use of frequency

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<sup>14/</sup> See Comments of AirTouch at pp. 3-13; PCIA at pp. 5-6; Premiere at pp. 5-7; and SkyTel at pp. 5-11.

<sup>15/</sup> See Comments of PageNet at p. 9. First-come, first-served application processing was rounded criticized in the Comments to the Part 22 rewrite. [cite]

<sup>16/</sup> See Comments of AirTouch at 3-13.

<sup>17/</sup> In AirTouch Paging's experience 931 MHz applications take approximately 7-9 months, while VHF and UHF applications take approximately 6-8 months. Indeed, some of the disparity may be attributable to the longer filing window accorded 931 MHz applications.

coordination to minimize the Commission's scarce resources and speed up license processing.<sup>18/</sup>

7. Although the Commenters may disagree about the public interest benefits of the Commission abandoning block allocation processing rules, there appears to be a general consensus that the Commission should adopt market area licensing in lieu of the current transmitter specific licensing.<sup>19/</sup> These Commenters agree that market area licensing will promote the Commission's objectives of eliminating unnecessary information collection requirements, streamlining licensing procedures, and reducing the processing and review burden on the Commission staff.<sup>20/</sup>

8. If the Commission adopts market area licensing, the public interest problems inherent in frequency-specific licensing rules would vanish. As AirTouch Paging pointed out in its Comments, the primary public interest problem with frequency specific licensing is the possibility of strike applications hindering the ability of existing operators to expand into new areas.<sup>21/</sup> Market area licensing solves this problem by granting an applicant a license comparable to the largest market area that it would want to serve. Once all licensees have a market area license, whether the applicant or the Commission chooses the

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<sup>18/</sup> See Comments of AirTouch Paging, fn. 17.

<sup>19/</sup> See Comments of AirTouch Paging at 8-13; PCIA at pp. 7-8; PageNet at pp. 7-8; and Premiere at p. 9.

<sup>20/</sup> See Comments of AirTouch Paging at pp. 8-13; PCIA at pp. 7-8; and PageNet at pp. 7-8.

<sup>21/</sup> See Comments of AirTouch Paging at p. 4. See also SkyTel at pp. 9-11.

frequency becomes of less importance.<sup>22/</sup> AirTouch Paging, however, continues to believe that, even if the Commission adopts market area licensing, the block allocation processing rules should continue because of the inherent public interest benefits that such processing method affords.

**IV. The Commission Should Expand  
The Scope of Modification Licenses  
Not Subject to Mutually-Exclusive Applications**

9. In the NPRM, the Commission proposed that any application for a facility that was located less than 2 kilometers from an existing facility would be considered a license modification not subject to competitive bidding.<sup>23/</sup> All Commenters but one that addressed this proposal supported it,<sup>24/</sup> but several suggested that the Commission expand the 2 kilometers modification safe harbor even further to a fifty percent overlap

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<sup>22/</sup> It is interesting that PageNet supports frequency specific licensing but also supports frequency coordination. AirTouch Paging sees these two ideas as inconsistent. If an application is sent for frequency coordination, the coordinator must have the ability to choose among various frequencies for the application. If an applicant can apply for a specific frequency, the coordinator would have no ability to resolve mutual exclusivity problems.

<sup>23/</sup> NPRM at ¶18. As AirTouch Paging understands the proposal, any application which is located at a perimeter site would be subject to the rule. Obviously interior sites which do not expand the service are of the combined facilities would never be subject to competing applications under the current rules, or the proposed new rules.

<sup>24/</sup> See Comments of AirTouch Paging at pp. 15-16; Ameritech at pp. 7-9; Comp Comm at pp. 6-7; Metrocall at pp. 4-9; PageNet at pp. 15-16; Paging Partners at pp. 5-6; Priority at pp. 3-6; Pronet at pp. 6-9; Source One at pp. 2-3; and SSI at pp. 4-7; but see SkyTel at 12-15.



test.<sup>25/</sup> AirTouch Paging agrees with those Commenters who seek to relax the modification standard, and encourages the Commission to adopt such a rule.

10. Switching to a fifty percent overlap rule will serve the public interest by encouraging existing licensees to expand their current systems without fear that the application might generate a mutually exclusive application. As AirTouch Paging pointed out in its Comments, the rule proposed in the NPRM would allow existing 931 MHz operators to relocate perimeter sites without fear of strike applications.<sup>26/</sup> The further relaxation of the rule, as proposed by certain Commenters, would extend this protection to a larger area; thus, according existing licensees who are serving the public greater flexibility in constructing wide-area systems. Furthermore, this rule would not decrease the opportunity of legitimate applicants to license new systems because the fifty percent rule would only permit an expansion of ten miles, not entire new markets.

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<sup>25/</sup> See Comments of Ameritech at pp. 8-9; Comp Comm at pp. 6-7; Paging Partners at p. 6; and Source One at p. 3.

<sup>26/</sup> Comments of AirTouch Paging at pp. 15-16.

**V. Conclusion**

11. The foregoing premises having been duly considered, AirTouch Paging respectfully requests that the Commission (i) retain the block allocation processing rules for 931-932 MHz paging channels, with some modifications, and (ii) adopt the proposals set forth by AirTouch Paging.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I, Tana Christine Maples, a secretary in the law firm of Bryan Cave, do hereby certify that on this 5th day of July, 1994, I sent copies of the foregoing Reply Comments of AirTouch Paging via first class mail, postage prepaid, or by hand delivery to the following:

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